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10 *TAE K. KAI, Trustees of the Kai Family 1998 Trust*

11 **UNITED STATES BANKRUPTCY COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 In re:

15 HAWAIIAN RIVERBEND, LLC,

16 Debtor.

Case No.: 22-50314-SLJ

Chapter 11 (Sub-Chapter V)

Date: June 21, 2022

Time: 2:00 p.m.

Court: Hon. Steven L. Johnson

***** Hearing to be conducted by
Telephone or Video Conference**

17 **SECURED CREDITORS' APPLICATION FOR ORDER SHORTENING TIME**
18 **FOR NOTICE OF HEARING ON MOTION TO CONVERT CASE TO CHAPTER 7,**
19 **OR IN THE ALTERNATIVE, FOR DISMISSAL WITH REFILEING BAR**

20 KENNETH Y. KAI and TAE K. KAI, Trustees of the Kai Family 1998 Trust ("Kai"), are
21 secured creditors and interested parties in the above-captioned Case No.: 22-50314-SLJ
22 ("Bankruptcy Case") of HAWAIIAN RIVERBEND, LLC ("HR LLC"), the Debtor in this single
23 asset real estate Bankruptcy Case. Kai applies under Bankruptcy Local Rule ("BLR") 9006-1(c) for
24 an order shortening time for notice of the hearing on their motion to convert this Chapter 11
25 Bankruptcy Case to Chapter 7, or in the alternative, to dismiss this Bankruptcy Case with a refileing
26 bar of two (2) years ("Motion"). A copy of the Motion and all supporting papers was filed on June 6,
27 2022 [DKT # 51], and duly served on counsel for HR LLC by both email and CM/ECF electronic
28 notice.

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2 **I. Relief Requested in the Motion**

3 1. HR LLC previously filed a Chapter 11 in U. S. Bankruptcy Court for the District of
4 Hawaii, Case No. 16-00348 (“HR LLC 2016 Bankruptcy Case”). HR LLC was able to confirm a
5 Chapter 11 Plan (“Plan”) in the HR LLC 2016 Bankruptcy Case, a copy of which is attached as
6 Exhibit One to the Kai Request for Judicial Notice (“RJN”), attached to the Motion. The Plan called
7 for HR LLC to sell an approximately 14.622-acre parcel of real property located in Waikoloa,
8 Hawaii and identified with Tax Map Key No. (3) 6-8-002-053 (“Property”).

9 2. The Debtor materially defaulted on the Plan by failing to conduct a sale or submitting
10 the Property for auction and had no intention of complying with the Plan. As a result, the HR LLC
11 2016 Bankruptcy Case was dismissed for cause.

12 3. HR LLC is owned and controlled by Michael H. Miroyan (“Miroyan”) HR LLC’s
13 sole member. Miroyan fraudulently transferred the Property from HR LLC to himself for no
14 consideration on or about August 9, 2018. Miroyan then filed Chapter 13 bankruptcy case No. 18-
15 52601 on November 26, 2018 (“Miroyan Chapter 13 Case”), the same day as Kai’s scheduled
16 foreclosure auction of the Property, which prevented the foreclosure. [RJN, Ex. 3, Motion for Relief
17 from Stay, p. 4:10 – 17] Kai subsequently moved for relief from stay and obtained an Order Granting
18 Motion for Relief from Stay and Awarding in Rem Relief Under 11 U.S.C. §362(D)(4) on March 15,
19 2019 (“In Rem Order”). [RJN, Ex. 5]

20 4. As set forth in the Declaration of Matthew C. Shannon (“Shannon Decl.”) attached to
21 the Motion, Kai took a number of steps in Hawaii pursuant to the In Rem Order, and an auction sale
22 of the Property was set for April 14, 2022, at 12:00 p.m. [Shannon Decl., Exhibit 8] HR LLC filed
23 the Bankruptcy Case the day of the scheduled foreclosure auction, which did not proceed.

24 5. The Motion seeks either conversion of the Bankruptcy Case to Chapter 7 so that a
25 Trustee can be appointed to perform on the Plan and sell the Property, or dismissal of the Bankruptcy
26 Case with a two-year refiling bar to prevent HR LLC and/or Miroyan from filing yet another
27 bankruptcy case on the eve of the next foreclosure auction.

28 **II. Grounds for Order Shortening Time**

1 **(a) Reason for the Request**

2 6. This Court issued an Order to Show Cause on June 2, 2022 [DKT # 46] (“OSC”),
3 which was heard on June 7, 2022. The OSC was continued to June 21, 2022, at 2:00 p.m. along with
4 the Chapter 11 Status Conference, and the Court suggested Kai seek an Order Shortening Time to
5 have the Motion heard at the same time, with opposition due on June 16th. These matters should be
6 heard together, and good cause exists under BLR 9006-1(c) to shorten time.

7 **(b) Previous Time Modifications Related to the Subject Matter of the Request**

8 7. None.

9 **(c) Effect of the Request for Shortened Time**

10 8. Kai does not believe there is any adverse effect or impact of the request to hear the
11 Motion on June 21st. The Motion was already served and filed, and the Court noted Miroyan was
12 present “in the gallery” at the June 7th hearing.¹ Miroyan is therefore already aware of the June 21st
13 hearing date, and June 16th deadline to file opposition to the Motion.

14 **(d) Contact with Opposing Parties**

15 9. As set forth in the Declaration of Wayne A. Silver in Support of the Application,
16 Miroyan was asked to consent to the request for an order shortening time and service by electronic
17 mail, via an email sent to him the evening of June 7, 2022, at approximately 5:30 p.m. This email
18 was copied to HR LLC’s counsel, who was granted permission to withdraw at the June 7th hearing.
19 There was no response to this email.

20 **III. Service of Notice and Filing of Opposition**

21 10. Kai requests the Court set the hearing on the Motion on June 21, 2022, at 2:00 p.m.,
22 determine that service of notice of the hearing be deemed adequate if served within 24 hours after the
23 Order Shortening Time has been docketed, and that service may be affected by electronic mail to
24 Miroyan at: mac8881@me.com, by CM/ECF to all parties entitled to electronic notice, and by
25 regular mail to HR LLC at the address on the Court Docket, which is HAWAIIAN RIVERBEND,
26 LLC, 620 Vasona Ave., Los Gatos, CA 95032. Kai also requests that any opposition to the Motion
27 be filed and served by electronic mail on or before June 16, 2022.

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¹ The June 7th hearing was conducted by remote video.

1 **WHEREFORE**, Kai requests the Court enter an Order:

2 1. Scheduling a hearing on the Motion for June 21, 2022, at 2:00 p.m. via remote video
3 appearance;

4 2. Shortening time for notice of said hearing, and determining that service of notice of
5 the hearing be deemed adequate if served within 24 hours after the Order Shortening Time has been
6 docketed;

7 3. Allowing service of the notice of the hearing by electronic mail to Miroyan at:
8 mac8881@me.com, by CM/ECF to all parties entitled to electronic notice, and by regular mail to HR
9 LLC at the address on the Court Docket, which is HAWAIIAN RIVERBEND, LLC, 620 Vasona
10 Ave., Los Gatos, CA 95032;

11 4. Requiring any written opposition to the Motion be filed and served on or before June
12 16, 2022; and,

13 5. For such other relief as the Court deems appropriate.

14 Date: June 8, 2022

/s/ Wayne A. Silver

Wayne A. Silver, attorney for *KENNETH Y.
KAI and TAE K. KAI, Trustees of the Kai
Family 1998 Trust*